If there is any doubt which cannot be removed, the High Court may decide in which district the trial is to be held. (Section 185.)

No sentence can be set aside because the trial was in a wrong district, unless it appears that the accused person or the prosecutor were actually prejudiced by the error. (Section 531.)

SECTION II.—INVESTIGATION BY THE POLICE.

§ 1.—*Cases under various Laws.*

We are now in a position to proceed to consider the investigation and trial of offences.

I may repeat once more that under sections 5, 29, of the Code all offences under the Penal Code, as well as those under the Forest and other "special" laws, are triable under the Code by the Courts therein specified, unless there is any provision in the special law otherwise. The Forest Acts contain no such exceptional provisions, save that in Burma, third-class Magistrates are not to try forest cases unless specially empowered.

§ 2.—*Offences how classified for Police purposes.*

There are two great classes of criminal cases, the classification being made on the ground of public convenience and with the object of saving time and securing the due preparation of important cases, so that there may be no failure of justice. In one class the Police take action on receiving complaint or information, and work the whole case out, as far as the evidence for the prosecution is concerned, before it is submitted to the Court. In the other class, the cases are such that they do not require this process ordinarily, but the complainant's deposition, or the evidence he proposes to produce, puts the Magistrate in a position to try the case without difficulty.

The former class of cases is called "cognizable," *i.e.*, by the Police, and the second-class consists of cases "nor cognizable."

For the purposes of investigation "cognizable" offences are recognized by the fact that they are entered in Schedule II appended to the Code, as cases in which the Police may arrest without warrant. Offences against special laws are, as a matter of rule, shown in the

schedule as non-cognizable, if punishable with fine only, or with less than three years' imprisonment; but this is subject to any special provisions of the law, and under the *Forest* Act, offences are (with certain exceptions,—see last paragraph to section 63, Forest Act) specially made cognizable, since the Police as well as Forest Officers, may arrest "without warrant" any one reasonably "suspected" of committing, or having been concerned in, a forest offence (this, observe, includes abetment of forest offences). The Burma Act is the same, save that there, there is no exception.

Under the Procedure Code (section 54) a Police Officer may without a warrant arrest any one,—

(*a*) who has been concerned in a cognizable offence (*e.g.*, the Police officer has seen him);
(*b*) against whom a reasonable complaint of such an offence has been made;
(*c*) against whom credible information has been received;
(*d*) a reasonable suspicion exists;
(*e*) when the person is a proclaimed offender under the Code or by order of the local Government;
(*f*) who has house-breaking tools, or who has in possession what is reasonably suspected to be stolen property;
(*g*) any person who obstructs the Police officer in his duty—or tries to escape, or who has escaped;
(*h*) a deserter from the army or navy;

A person liable to arrest may be pursued by a Police officer into the jurisdiction of another Police officer even in another province. (Section 58.)

If the person to be arrested takes refuge in a house, the powers of the Police officer may be learnt in sections 47-48[3].

As to the *search* of the arrested person, section 51 may be consulted. Every person arrested must be at once taken before a

[3] In all cases where there is time and opportunity, they will do well to get a *warrant* to arrest and a *warrant* to search, and thus they have more liberty of action. See Police Act V of 1861, section 24.

Magistrate, or *before an officer in charge of a Police station.* (Section 60.)[4]

§ 3.—*Preventive action of Police.*

The Police may also take *preventive* action. Every Police officer may prevent the commission of a cognizable offence (Code, section 49, and Forest Act, section 64). If he receives information of a design to commit such an offence, he is bound to communicate the news to his own superior officer, and to any other officer whom it may concern to prevent or take cognizance of the commission of such offence. If it is not possible otherwise to prevent the offence, a Police officer may arrest the would-be offender (section 151), and a Police officer may interfere to prevent injury to any public property or to a landmark, section 152. This would practically give him power to interfere in forest cases, especially intended fires, destruction of boundary pillars, and so forth; but he is expressly empowered and required (as well as a Forest Officer) to *interpose* and *prevent* forest offences (Forest Act, section 64). Persons arrested under the Forest Act are to be taken without unnecessary delay before the Magistrate. (Section 63, Forest Act.) In ordinary cases an officer in charge of a Police station can keep an accused person for 24 hours, but if he has not by that time got the case ready to send up to the Magistrate, he must send up the prisoner and get an order for remand. (Section 124.)

§ 4.—*The process of Investigation.*

The reader will at once perceive that in all cognizable offences the Police will either succeed in making an arrest at once, or after a short pursuit, the offender being known or suspected from the first, or else (what is even more commonly the case), the offence will be known, but the offender has fled, and may not be found till perhaps after a long and elaborate detective investigation.

When an offence is known to have happened, whether or not an offender has been arrested in connection with it under section 54, the *officer in charge of a Police station* having jurisdiction (see

[4] The Police stations in a district, and the officers in charge of them, are matters of organization arranged by the chief Police authorities under Act V of 1861, section 12.

section 156) may at once, on his own authority, commence an investigation. (Section 157.) When the knowledge of the offence comes by an information or complaint to the Police, this will be reduced to writing and signed, marked, or sealed by the complainant, and the substance entered in a book kept for this purpose. On receiving the complaint, or, if there is no complaint, on hearing of or suspecting the commission of a cognizable offence, the Police officer in charge shall send intimation to the Magistrate and proceed himself or send a subordinate to investigate. (Sections 157-8.) The Magistrate who gets intimation may also go himself, or depute a Magistrate subordinate to him, to make investigation. (Section 159.)

When the offence is not serious, and the offender is complained against by name, the local investigation may be dispensed with (section 157, *proviso*); and so, if on other grounds, a local investigation appears unnecessary: but in any case the fact is to be reported to the Magistrate having jurisdiction, and the reasons for not investigating, &c., stated.

In the course of a Police investigation it may happen that search has to be made for stolen property, or other property connected with the case. This is described in section 165. If possible, the officer in charge of the Police station should conduct the search in person; if not, he must give an order in writing, specifying particulars, to have it done by a subordinate, and the search has to be conducted in the same way as a search under a Magistrate's warrant, of which mention will be made afterwards.

The production of any document required can be enforced by an officer in charge of a Police station under section 94.

§ 5.—*Police record of Statements made.*

When making an investigation, the Police officer may require by written order the attendance of any person who is believed to know the circumstances, and such person is bound to attend and answer questions. This extends to the limits of the Police officer's own *and* adjoining stations. (Sections 160-1.) Persons though generally

bound to answer are not bound to answer such questions as tend to criminate themselves.

The statements made may be taken down[5], but are not signed by the deponent, nor can they be used as evidence in a subsequent trial. (Section 162.)

The accused (if one has been arrested) is to be allowed, but not induced by threat or otherwise, to make a statement. (Section 163.) Such a statement may be written down, but only for the Police officer's own information. It is ordinarily not evidence, nor can it be used on a trial in Court. If the accused wishes to make a statement during the investigation (*i.e.*, at any time before the case actually comes into the Magistrate's Court for enquiry or trial), the person must be taken before *any* Magistrate (section 164), who, having ascertained that the statement is voluntary, may take it down in full in the form and with the memoranda or certificates specified in section 364. Such a statement can be produced in evidence.

A statement or confession of the accused to the police can, however, be used in evidence so far as it relates to the finding of property which was indicated thus to the police and which was found accordingly. (See Evidence Act, sections 25-28.)

§ 6.—*Accused when admitted to bail.*

Supposing the Police to have got hold of the accused, then the question arises, is the offence bailable or non-bailable?

This fact is shown, as regards all offences under the Penal Code, in the Schedule II at the end of the Code. As regards Forest offences and others under special laws, unless there is a special provision of the law otherwise (which there is not in Forest cases), all such as are punishable with imprisonment of less than three years, or with fine only, are bailable.

[5] Because they are useful as a guide to the Police. When a Forest Officer, specially empowered, holds a local enquiry (section 71, Forest Act), he is empowered regularly to take down evidence on "oath" (Act X of 1873, section 4) and then, provided it was taken in presence of the accused, it will be admissible as evidence at a subsequent trial.

If the offence is bailable, the accused has a *right* (section 496) to offer sureties, or to deposit cash or Government securities (section 513) and be let go. If the offence is not bailable, he has no such right, and the Police cannot accept bail "if there is reasonable ground for believing that he has been guilty of the offence imputed to him." (Section 497.)

It is only when the evidence is not very strong, and there are not reasonable grounds for believing that the accused has committed the offence, that bail can be taken (section 497, clause 2[6].)

If the Police, however, upon investigation (section 169) do not think that there is sufficient ground to believe the arrested person guilty, or to send him before a Magistrate, then of course section 497 does not apply, and they may take bail, or even a personal recognizance, and report the matter to the Magistrate; but it is to be remembered that by section 63 *no* person who has been apprehended by the Police can be discharged except on bail or his own recognizances[7], or by special order of a Magistrate.

§ 7.—*Remand when the Case is not ready.*

If the person is detained in custody it can only be for 24 hours, as already remarked (section 61), and if the case is not ready by then, an order of a Magistrate for further remand must be obtained, which may be specially given (usually for some urgent reason) by *any* Magistrate, but ordinarily is given by the Magistrate having urisdiction in the case.

§ 8.—*Case sent up to Magistrate.*

While the investigation is going on, the Police must enter all their proceedings in a *diary*. (Section 172.)

Where the Police officer thinks he has not sufficient evidence to send the accused up for trial, he must (as already remarked) (sec-

[6] The form of taking bail and other conditions are found in Chapter XXXIX. I do not think it necessary to go into the matter.

[7] His own bond to appear, on penalty of forfeiting the sum named in the bond, but without sureties for the fulfilment of the terms. In *bail*, the person signs the bond *and also* one or more sureties (as may be thought necessary), who can be made to pay if the person bailed fails to appear, &c.